

1. AGREEMENT

- 1.1 This Agreement sets out the terms under which Business Measures Limited has agreed it will provide goods and services to you.
- 1.2 This Agreement comes into existence on the Commencement Date shown in the Order as agreed by you.
- 1.3 Unless otherwise agreed in writing, each order that you make in respect of each type of goods and/or services which you may from time-to-time purchase from us will create a "Contract" for that order which will be subject to and will incorporate the terms set out in this Agreement and will apply in respect of that order.
- 1.4 The Contract in respect of each Order will incorporate the following and the expression "this Agreement" shall mean:
 - a. the terms of this Agreement;
 - b. the Order;
 - c. any contract change note; addendum; or notice served by Business Measures Limited under Clause 11 of this Agreement; and,
 - d. any other document that expressly incorporates this Agreement or which is made pursuant to it.
- 1.5 In the event of conflict between the terms contained in the following applicable documents, then the terms that shall prevail shall be in the following descending order of priority
 - a. Contract change note; addendum; or notice served by Business Measures Limited under Clause 11;
 - b. the Order;
 - c. these General Terms & Conditions; and
 - d. Any other document that expressly incorporates this Agreement or which is made pursuant to it.

2. INTERPRETATION

- 2.1 Any reference to (a) the plural includes the singular and vice versa, (b) any party includes its successors in title and permitted assigns, and (c) a "person" includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate personality).
- 2.2 Any reference to a statutory or regulatory requirement will (a) include any relevant Act of Parliament, subordinate legislation or other enforceable right and (b) be construed as a reference to that requirement as may be amended, replaced extended or consolidated from time to time.
- 2.3 General words will not be given a restrictive meaning where they follow one or more specific terms indicating a particular category of act, matter or thing or where they are followed by examples. The words "including" and "in particular" (or similar) will not limit the generality of any preceding words.
- 2.4 Headings are inserted for convenience only and shall not affect the interpretation of these Business Measures Limited General Terms and Conditions.
- 2.5 References to a "party" or to the "parties" should be taken as being to the parties to these Business Measures Limited General Terms and Conditions.

3. COMMENCEMENT & TERM

- 3.1 This Agreement shall commence on the Commencement Date and shall continue for its Minimum Term (unless terminated at an earlier date under Clause 13 - Termination) until terminated by either party giving to the other party not less than 3 (three) months advanced written notice of termination expiring on, or any anniversary of, the Expiry Date .
- 3.2 This Agreement will regulate dealings between you and us in respect of your purchase of Services from us effected by way of Orders from time to time
- 3.3 Each order for our Services shall be made by you on our Order document. Each Order shall commence or shall be deemed to have commenced on the Order Effective Date and shall continue for the Minimum Period.

BUSINESS MEASURES LIMITED - GENERAL TERMS AND CONDITIONS

4. SUPPLY OF SERVICES

- 4.1 We agree to supply, and you agree to receive, the Services subject to the provisions of this Agreement.
- 4.2 You agree that you are procuring Services for your own use and for the benefit of your Users as authorised by and in accordance with this Agreement and you will not re-sell, re-supply or otherwise distribute the Services or allow Users to do so.

5. ORDERS

- 5.1 You may place orders at any time during the term of this Agreement, subject to acceptance by us at our sole discretion. Each order shall become effective upon our explicit acceptance of an Order, provided that the order:
 - a. is completed in full; and
 - b. the Order shall not incorporate or be subject to any additional terms incorporated by you and any such terms attached or purported to be incorporated by you shall not apply.

6. RE-SIGNS

- 6.1 Existing services entered into prior to this Agreement and which are re-signed under this Agreement shall be governed by this Agreement and no other. Existing services not re-signed under this Agreement shall be governed by the original contract unless agreed otherwise.

7. SERVICE LEVELS

- 7.1 We will provide the Services in accordance with the relevant Service Levels as listed against each Service and/or product in each Order.
- 7.2 The Service Levels set out in a specific Order apply solely to the Services covered under that Order and no other Services provided for under this Agreement.

8. STAFF AND GOVERNANCE

- 8.1 The parties shall each appoint an Appointed Representative and continue to deploy the same to act as a point of contact for the other in respect of issues arising under this Agreement for the duration of this Agreement. Should an Appointed Representative's employment with a party be terminated, or should they be unable to perform the role of an appointed representative the party which engages them shall promptly replace such Authorised Representative with a suitably skilled and knowledgeable replacement and shall notify the other of that individual's name, job title and full contact details. Each party shall, with reasonable cause, be entitled to request that the other party replaces its Authorised Representative following the requirements of this clause.
- 8.2 We shall appoint a person to act as your Account Manager who will be responsible for the overall provision of the Services under this Agreement and who will be the principal point of contact between you and us. We may need to change your Account Manager from time to time, but will use reasonable endeavours to maintain the same personnel where reasonably practicable
- 8.3 Your Account Manager will be available for, and will pro-actively arrange, periodic review meetings to discuss our performance, your future requirements and promote new technologies.
- 8.4 In accordance with the Order form and Service Level Agreement, we will provide you with regular performance reports of the Services where reasonably required by you.

9. CUSTOMER GROUP

- 9.1 Subject to Clause 9.2, you may permit other members of your Group as notified to us from time to time to place orders under this Agreement and use the Services supplied by us under this Agreement, provided that any act or omission of such members of your Group shall for the purposes of this Agreement be deemed to be the act or omission of you.
- 9.2 You shall procure that such Group members fully comply with the terms of this Agreement. The relevant member of your Group may, on request, be billed separately for the Charges incurred by that member,

BUSINESS MEASURES LIMITED - GENERAL TERMS AND CONDITIONS

provided that you shall ultimately remain liable to pay all the Charges in respect of the Services by other members of your Group.

10. DISPUTES

- 10.1 Any disputes, controversies or claims arising out of this Agreement shall first be referred to the respective parties' Appointed Representatives. The Appointed Representatives will review the nature of the dispute together within thirty (30) days of the dispute arising and if they cannot reach agreement on the dispute within such thirty (30) day period, the matter shall be referred to the Chief Executive Officer or Managing Director of that part of the relevant Party's business which is responsible for performing the obligations of that Party under this Agreement. If the Chief Executive Officer or Managing Director are themselves unable to resolve the matter within thirty (30) days of the first request for them to do so, the Parties shall be free to pursue the matter in accordance with Clause 10.2.
- 10.2 Any dispute, controversy or claim which remains unresolved following escalation in accordance with Clause 10.1 shall be resolved in accordance with the Communications Providers ADR Service or such other mediation service as the Parties may agree.
- 10.3 Nothing in this Agreement prevents either party from seeking an interim legal remedy (such as an injunction or orders for delivery up, specific performance or disclosure) through the Courts at any time where that party's interests would be irretrievably prejudiced by the delay involved in satisfying the requirements of Clauses 10.1 and 10.2. Subject to the provisions of this Clause 10.3, however, no claim for monetary compensation shall be issued in respect of any matter to which Clauses 10.1 and 10.2 apply until the mechanisms in those Clauses have been exhausted, unless both parties agree.

11. VARIATIONS

- 11.1 We may by issue of a notice to you (sent by post or e-mail) vary the provisions of this Agreement where such variation is required as a result of:
- a. written request from you that has been approved in writing by an authorised representative of Business Measures Limited;
 - b. any legislation, statutory instrument, government regulation, regulatory requirement or licence;
 - c. changes imposed by third party manufacturers or suppliers; or
 - d. a change to Business Measures Limited's operations provided such change is also implemented in relation to the majority of Business Measures Limited's business customers.
- 11.2 Where any variation by Business Measures Limited to this Agreement is likely to be of material detriment to the Customer, Business Measures Limited will give the Customer at least one month's written notice of the variation (save where this is not practicable due to a change imposed by a legal or regulatory body) and the Customer will have the right to terminate the relevant Service in accordance with Clause 13 (Termination).

12. SUSPENSION

- 12.1 We may, without liability to you, suspend or restrict use of any of our Services if:
- a. the emergency services tell us to, or a law or regulation is passed which means we need to do so;
 - b. we believe you are using the Services in an illegal or fraudulent way;
 - c. you become subject to an Insolvency Event; or
 - d. during any technical failure, modification or maintenance of any supporting network infrastructure
- 12.2 We shall use our reasonable endeavours to keep any suspensions under Clause 12.1 to a minimum, to provide prior notice where possible and to restore the services as soon as reasonably practical.
- 12.3 Without prejudice to our other rights under this Agreement, we may additionally suspend or restrict use of any or all of our Services where we have not received payment of outstanding Charges (including any accrued interest) where those charges are not being disputed in good faith.

13. TERMINATION

- 13.1 Subject to the remainder of this clause 13, you may terminate this Agreement in whole or in part and may terminate any individual Order at any time by giving us 90 days written notice.

BUSINESS MEASURES LIMITED - GENERAL TERMS AND CONDITIONS

- 13.2 Without prejudice to Clause 11 (Variations), we may terminate this Agreement whole or in part by giving you 90 days written notice, provided such notice does not expire before the end of the Minimum Connection Period of any contracted Service.
- 13.3 Either Party may terminate this Agreement in whole or in part at any time by notice in writing if the other Party:
- a. is in material or persistent breach of any of the terms of this Agreement, by giving written notice specifying the breach and (if capable of remedy) requiring it to be remedied. If the breach is not remedied within 90 days of the date of this notice, this Agreement shall end on expiry of the 90 day notice period. If the breach is not remediable, termination will take effect immediately; or
 - b. becomes subject to an Insolvency Event
- 13.4 Termination Charges will be payable where an Order is terminated during its Minimum Connection Period by you under Clause 13.1 or by us under Clause 13.3. You acknowledge that the Termination Charges specified in Service Schedule Terms represent a genuine pre-estimate of the loss suffered by us due to early termination, having regard to the overall commercial deal between the Parties, and that the Termination Charges do not represent a penalty.
- 13.5 You may terminate an Order without liability for Termination Charges by giving us 30 days written notice where we have varied the terms of this Agreement pursuant to Clause 11 (Variations) in relation to that specific Order to the material detriment of you. This right to terminate ends 30 days after (a) the date on which the variation became effective, or (b) where the said material detriment is not apparent and could not reasonably have been expected to be apparent to you until a later date, that later date.

14. CONSEQUENCES OF TERMINATION

- 14.1 Termination of this Agreement will not affect any extant Order where Business Measures Limited's obligations continue beyond the Expiry Date and the terms of this Agreement shall continue to apply in respect of such Order until expiry of the Minimum Period relevant to each such Order ("Surviving Order") and no further or otherwise. You will not be able to make any new Orders after the Expiry date based on these Business Measures Limited General Terms & Conditions.
- 14.2 On expiry of Minimum period relating to the last Surviving Order following termination of this Agreement the following shall apply:
- a. you shall pay all undisputed outstanding Charges;
 - b. we shall no longer provide supply and you shall immediately cease to use the Services relating to the Surviving Order;
 - c. we will provide reasonable assistance to you in relation to transfer of Services relating to the Surviving Order to another provider;
 - d. you and we must promptly at the other's request return or destroy all Confidential Information (except as required for regulatory purposes) and also return any property belonging to the other (and where requested provide written confirmation of this); and
- 14.3 Termination or expiry of this Agreement (or any part of it) will not affect either Party's accrued rights or liabilities and provisions of this Agreement which are intended by their nature to survive termination shall continue in force (including Termination, Consequences of Termination, Liability, Intellectual Property, Software Licence, Data Protection, Confidentiality and General Terms) together with any other provisions necessary for their enforcement or interpretation.

15. LIABILITY

- 15.1 Nothing in this agreement limits or excludes:
- a. either party's liability for death or personal injury caused by the negligence of its employees, agents or sub-contractors, for fraud or fraudulent misrepresentation or for any other matter in respect of which liability cannot lawfully be limited or excluded; or
 - b. your obligation to pay the Charges, Termination Charges, refund any Credits or meet any Minimum Spend Requirement.

BUSINESS MEASURES LIMITED - GENERAL TERMS AND CONDITIONS

15.2 If you incur any liability as a result of a breach by us of the provisions of Clause 18 (Data Protection), we shall indemnify you for any and all such liability up to a maximum of £5,000,000.

15.3 Subject to Clauses 15.1 and 15.2:

- a. the total liability of each party under or arising in connection with this Agreement in contract, tort (including negligence), breach of statutory duty or otherwise will be limited to 50% of the charges paid or payable by you in the first 12 months of this Agreement;
- b. neither party will be liable to the other in contract or tort (including negligence) or otherwise for: (i) any loss (whether direct or indirect) of profit, business, contract, use, anticipated saving or revenue, goodwill, production, business interruption, wasted expenditure; or (ii) for any indirect or consequential loss or damage whatsoever arising under or in connection with this Agreement.

16. CHARGES AND PAYMENT

16.1 You must pay all Charges by BACS.

16.2 If you owe us undisputed money beyond the due date we may charge you interest daily at the rate of 4% over the prevailing base rate of Starling Bank Limited. We may also charge you reasonable administration costs as a result of you failing to pay when due.

17. CONFIDENTIALITY

17.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of 3 years after termination of this Agreement, disclose to any person the terms of this Agreement or any Confidential Information, except as permitted in Clause 17.2. Disclosure of Confidential Information is (subject at all times, where applicable, to the provisions of the Data Protection Legislation) permitted:

- a. by each party to its employees, officers, representatives, advisors, contractors and suppliers for the purposes of service implementation and performance management of this Agreement;
- b. as may be required by law, court order or any governmental or regulatory authority;
- c. with the consent of the disclosing party;
- d. to the extent that information has come into the public domain through no fault of the receiving party; and,
- e. by you to other members of your Group to the extent required in connection with Clause 9 – Customer Group.

18. DATA PROTECTION

18.1 Each party shall comply with its obligations under Data Protection Legislation.

18.2 You agree that your details and those of your people may be used and disclosed by us from time to time for the purposes of this Agreement and (except where any individual recipient has withdrawn their consent to receive the same) for marketing purposes.

18.3 We may monitor or record calls and emails for our business purposes such as to improve customer service, carry out quality control exercises, train our staff and to make sure we have effective systems in place to prevent or detect unauthorised use, fraud or crime.

18.4 Without prejudice to the generality of the provisions at Clause 18.1, each party confirms to the other that:

- a. On becoming aware of a data breach or other incident affecting the integrity or security of personal data of which the other party is a controller, they will promptly notify the other party of all essential particulars of that breach or incident, and co-operate with the other party to address any issues arising from that; and
- b. On receipt of a request from a data subject to exercise their rights under the Data Protection Legislation in respect of personal data of which the other party is a controller, they will promptly pass that request to the other party and will not communicate with the data subject in connection with the same without the permission of the other party.

18.5 We aim to never collect or store any information that is not required for the delivery of the services to which you subscribe. Any information that we do collect is and will always be explicitly accounted for in our Privacy

BUSINESS MEASURES LIMITED - GENERAL TERMS AND CONDITIONS

Policy published at <https://businessmeasures.co.uk/privacy-policy> . We will take reasonable steps to destroy personal information we hold if you require us to do so, or if the personal information is no longer needed for the purposes of delivering those services in accordance with EU General Data Protection (GDPR) regulation and the ePrivacy regulation.

19. INTELLECTUAL PROPERTY

- 19.1 All Intellectual Property Rights used by or subsisting in the Services shall remain the sole property of Business Measures Limited or (as the case may be) the relevant third-party rights owner.
- 19.2 Where Intellectual Property Rights are created as a result of or otherwise in connection with the supply of the Services to the Customer, these Intellectual Property Rights shall be owned by Business Measures Limited or the third-party rights owner as applicable.
- 19.3 All Intellectual Property Rights in the information provided by you in connection with the Services shall remain your property.
- 19.4 You must not:
- do anything or allow anything to be done which might jeopardise Business Measures Limited's or its licensors' Intellectual Property Rights;
 - dispute or challenge the rights of Business Measures Limited or the relevant third party rights owner; or,
 - apply for, or obtain, registration in any country of any trade or service mark or any other Intellectual Property Rights which consists of, or comprises of, or are confusingly similar to, the trade marks of Intellectual Property Rights of Business Measures Limited or its licensors.
- 19.5 The Customer expressly and unequivocally hereby agrees to, and shall, indemnify and hold Business Measures Limited, its officers, directors, shareholders, employees, agents, insurers, attorneys, successors, and assigns harmless, from and against, any and all, third party liability, losses, claims, expenses (including reasonable attorneys' fees), demands, or damages of any kind resulting directly from the acts and omissions of the Customer, its employees, or agents or arising out of or incurred in connection with the distribution, marketing or sublicensing of the software copies by the Customer. The Customer shall have the opportunity to defend any such claim or action with counsel of its own choosing and there shall be no settlement by Business Measures Limited for which the Customer shall be liable hereunder unless the Customer has consented to such settlement.
- 19.6 Should the Software become or, in Business Measures Limited's opinion be likely to become the subject of a claim of infringement of a patent, trade secret or copyright, Business Measures Limited may:
- procure for the Customer at no cost to the Customer, the right to continue to use the Software;
 - replace or modify the Software, at no cost to the Customer, to make such non-infringing, provided that the same function is performed by the replacement or modified Software; or
 - accept the return of the Product in exchange for a refund of the Price that Business Measures Limited actually sold to the Customer for such Product, less depreciation based on a straight-line depreciation schedule over the Minimum Period.
- 19.7 Business Measures Limited shall have no liability for any claim of patent, trade secret or copyright infringement based on:
- the use of other than the then latest Software release of the Software, if such infringement could have been avoided by the use of the latest Software release and such latest release had been made available to the Customer, but, the Customer with knowledge of actual or possible infringement, chose to retain the prior release; or,
 - the use or combination of the Software with other software, hardware or other material not provided by, or not authorised by Business Measures Limited. Material affects to the customers use of the system by adopting this clause would be reviewed on a case by case basis.
- 19.8 Sections 19.5 and 19.6 herein state the entire liability of Business Measures Limited with respect to infringement of patents, trade secrets and copyrights by the Software or any parts or use thereof and Business Measures Limited shall have no additional liability with respect to any alleged or proven infringement.

BUSINESS MEASURES LIMITED - GENERAL TERMS AND CONDITIONS

20. SOFTWARE LICENCE

- 20.1 The Services provided under this Agreement may contain or use Business Measures Limited Software or End User Licensed Software. Where Business Measures Limited Software is provided, Business Measures Limited grants the Customer a non-exclusive, revocable, non-transferable licence (without the right to sub-licence) to use any such Business Measures Limited Software in object code form for the purpose of properly accessing the Services in accordance with this Agreement. Any End User Licensed Software provided or accessed shall be governed by the terms of the relevant licence which shall comprise the Customer's sole rights and remedies in respect of such End User Licensed Software.
- 20.2 If the Customer does not accept the licence terms relating to the End User Licensed Software, it shall not use the relevant feature of the Service to which the End User Licensed Software relates and Business Measures Limited shall not be required to deliver the relevant Service. The Customer shall indemnify and keep indemnified Business Measures Limited in full and on demand for any claim or for any losses incurred or suffered by Business Measures Limited (including any legal costs) arising from any failure of the Customer to comply with the terms of the End User Licensed Software or Business Measures Limited Software.
- 20.3 The licence granted under this Agreement to use Business Measures Limited Software may be terminated if the Customer disputes the ownership of any Intellectual Property Rights under this Agreement, fails to comply with any term of this Agreement or if the continued use or possession of the Business Measures Limited Software infringes the rights of any third party. The licence shall further be subject to the Customer undertaking:
- a. not to copy, reproduce, translate, adapt, vary, modify, sub-licence, decompile, reverse engineer or create derivative works from or allow any third party access to any Business Measures Limited (or any part of it) unless expressly permitted to do so by Business Measures Limited or by relevant law; and
- 20.4 Software delivered to the Customer by electronic means cannot be reissued and the Customer shall ensure that correct email addresses are provided for these purposes and that any firewall or other protection will not prevent such delivery.

21. GENERAL TERMS

Notices

- 21.1 Notices served in accordance with the Agreement shall be in writing and shall be delivered by hand or first class post or other next day delivery service to the address given in the Agreement, or sent by email to the Appointed Representatives as set out in this Agreement.
- 21.2 All notices will be deemed served 48 hours after they are sent, or on earlier proof of delivery. Notices sent by email will be deemed served at time of transmission.
- 21.3 The provisions of Clauses 21.1 and 21.2 shall not apply to the service of any proceedings or to the service of any other documents in any legal action.

Waiver

- 21.4 The failure or delay by either party to exercise a right or remedy under this Agreement does not constitute a waiver of the right or remedy or of any other rights or remedies. No single or partial exercise or waiver of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy.

Force Majeure

- 21.5 If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question. Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations, excluding Payment, under this agreement, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.

Assignment

BUSINESS MEASURES LIMITED - GENERAL TERMS AND CONDITIONS

21.6 Neither party shall be entitled to assign or subcontract this Agreement, nor all of its rights and obligations hereunder, without the prior written consent of the other, such consent not to be unreasonably withheld.

Entire Agreement

21.7 This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between them whether oral or in writing. You shall have no remedy in respect of any untrue statement made to you upon which you relied in entering into this Agreement (unless such untrue statement was made knowing that it was untrue) other than any remedy it may have for breach of the express terms of this Agreement.

Severability

21.8 If any term or provision hereof is held by any court of competent jurisdiction to be void or invalid, this shall not affect the validity or enforceability of any other term or provision.

No third-party rights

21.9 Pursuant to the Contracts (Rights of Third Parties) Act 1999, a person who is not party to this Agreement shall not have any rights under or in connection with it. No member of your Group shall have any right to directly enforce any provision of this Agreement.

No legal partnership

21.10 Nothing in this Agreement creates, is intended to create, or shall be deemed to have created a legal partnership or joint venture of any kind between the parties, nor constitute any party as agent or distributor of the other for any purpose and no party shall have authority to act as agent for, nor to bind, the other party in any way.

Non-solicitation of staff

21.11 All Parties agree not to offer employment to any person employed by the other during this agreement and for six months after the termination of this Agreement, unless:

- a. the prior written consent of the other party has been given; or,
- b. it can be clearly demonstrated the person in question independently approached the other party seeking employment.

Requirement to act reasonably

21.12 Where we both are required under this Agreement to exercise discretion, we both agree to act reasonably and without delay.

Law and Jurisdiction

21.13 This Agreement is governed by and construed and interpreted in accordance with English Law and we hereby submit to the exclusive Jurisdiction of the English Courts.

BUSINESS MEASURES LIMITED - GENERAL TERMS AND CONDITIONS

Definitions

In these Business Measures Limited General Terms and Conditions, unless the context otherwise requires, the following definitions apply:

“Account Manager” means a person nominated by Business Measures Limited to act as your Account Manager who will be responsible for the overall provision of the Services under this Agreement.

“Appointed Representatives” means in respect of each party the individuals on the front of the Order signed by you accepting the terms of these Business Measures Limited General Terms and Conditions (as may be replaced pursuant to Clause 8.1 (Staff and Governance)).

“Business Measures Limited” means Business Measures Limited (registered in England & Wales, Company number 13354237) whose registered office is at Charter House, Southdown Road, Harpenden, England AL5 1NL (or any organisation that may succeed it as the assignee of this Agreement).

“Business Measures Limited Software” means any software, excluding End User Licensed Software, that is owned by Business Measures Limited or licensed by Business Measures Limited on behalf of a third party, and which may be updated from time to time.

“Charges” means all monies payable by you to us under this Agreement as set out in any Order and these Business Measures Limited General Terms and Conditions.

“Commencement Date” means the date shown on the front of Order signed by you accepting the terms of these Business Measures Limited General Terms and Conditions.

“Confidential Information” means any commercial or technical information in whatever form which is disclosed by one party to the other party and which would be regarded as confidential by a reasonable business person including, without limitation, all business, statistical, financial, marketing and personnel information, customer or supplier details, know-how, designs, trade secrets or software of the disclosing party or any member of its Group.

“Contract change note” the communication issued by Business Measures Limited by email or other suitable notice permitted by this Agreement detailing the Customer’s requested change to this Agreement.

“Credit” a notional credit which has no cash redemption or equivalent value that can be used by the Customer to purchase Services at the List Price from Business Measures Limited in accordance with the terms of this Agreement, and any other contractual credit, subsidy, fund, discount or cheque which Business Measures Limited agrees to provide under this Agreement.

“Customer” the person or entity whose name appears on the Order as signed by its authorised representative.

“Data Protection Legislation” means the UK General Data Protection Regulation, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (s/2000/2699), any amendments or replacements to them and all other applicable laws and regulations relating to the processing of personal data and privacy.

“End User Licensed Software” means software licensed to the Customer by a separate agreement with the licensor of such software, as set out in any Order or by any 'shrink wrap' or 'click through' licence agreement or “in-box” documentation provided.

“Expiry Date” means the date shown on the front of the Order signed by you accepting the terms of these Business Measures Limited General Terms and Conditions.

“Force Majeure” means circumstances beyond the reasonable control of a party including, without limitation, strikes, lock-outs or other industrial disputes (excluding our workforce), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, malicious damage, epidemic, pandemic, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. Provided that Force Majeure shall not, under any circumstances, include any unauthorised access to, any cyber-attack on or any security breach of your or any of your Group’s IT systems or electronic records or any loss or corruption of your or any of your Group’s data, records or IT systems resulting from or arising due to us accessing or having access to your or any of your Group’s data, records or IT systems (such access being as permitted for the purposes of performing our obligations under any Order) or otherwise arising or resulting from our provision of the Services to you or any of your Group.

“Group” means any entity or person controlled by, controlling or under common control with Business Measures Limited or the Customer (as applicable), from time to time. For the purpose of this definition the term "control" means ownership, directly or indirectly, of: (i) equity securities entitling it to exercise, in aggregate, 50% or more of the voting power in such corporation or other entity; (ii) 50% or more of the interest in the profit or income in the case of a business entity other than a corporation; or (iii) in the case of a partnership, any other comparable interest in the general partnership.

“Insolvency Event” means an event where either party:

- a) ceases, threatens to cease or suspends trading or carrying on business (other than temporarily by

BUSINESS MEASURES LIMITED - GENERAL TERMS AND CONDITIONS

reason of a strike); or,

- b) suspends payment of its debts or is or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or commits any act of insolvency, or enters into a composition or voluntary arrangement with its creditors, or has a receiver or administrator appointed over the whole or any part of its business or assets, or has a creditor's winding up petition advertised against it in the appropriate Gazette, or passes a resolution to wind up (other than for the purposes of a solvent amalgamation or reconstruction), or is subject of any action or procedure commenced in any jurisdiction which is similar to or analogous with any above mentioned action or procedure.

"Like-for-Like Service" means a benchmarked service that is of equal quality to the existing Service Business Measures Limited provide. For the avoidance of doubt this means equality of the technical specification, Support Accreditation and Service Level Agreement in place including, but not limited to country of support, hours of cover, response, redundancy and disaster recovery options.

"List Price" means the standard prices for the Services as current at the time the price needs to be determined.

"Minimum Period" means the minimum period (as stated in the relevant Order) that the Customer commits to receive the relevant Service

"Minimum Spend Requirement" means the minimum sum set out in any Order that the Customer commits to pay Business Measures Limited in Charges in relation to a particular Service or Services during the specified Minimum Connection Period.

"Minimum Term" means the minimum period stated on the front of the Order signed by the Customer accepting these Business Measures Limited General Terms and Conditions which subject to clause 1.4 will apply to the relevant Order/s made by you during such period.

"Order" means the document signed by the Customer that signifies the Customer's acceptance of these Business Measures Limited General Terms and Conditions, that may be used to detail the Customer requirements and Business Measures Limited Charges and Terms specific to the Service and/or Products listed on such form.

"Order Effective Date" means the date on which Business Measures Limited commences supply of a particular Service to the Customer.

"Service Levels" means the Service Level for a particular Service set out in and forming part of the relevant Order.

"Service(s)" means the service(s) set out in the Order and any other Services that may be agreed between the parties from time to time, which may include support services and/or equipment that may contain or use Software.

"Termination Charges" means the lump sum termination charges set out in the Order for a particular Service payable on termination of a Service before completion of the Minimum Period and/or Minimum Term of this Agreement.

"Users" means the Customer or anyone who is permitted by the Customer to use the Service(s) provided under this Agreement.